

AMLA Regime Compliance and Confidentiality of Client Information

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Abstract

Money laundering offences have becoming important issues worldwide. Within the accounting fraternity, discussions have involved an important issue related to the low level of compliance by professional accountants towards the anti-money laundering regime in Malaysia. Professional accountants have been named as one of the reporting institution under the anti-money laundering regime, where they are required to implement compliance programs such as Know Your Customer, Clients Due Diligent, Record Keeping and reporting of suspicious transaction. This study aims to examine the relationship between confidentiality of client information and compliance of anti-money laundering regime among professional accountants in Malaysia. A questionnaire was development and sent to 1100 professional accountants. However, 275 questionnaire were collected and analyses using regression analysis. Findings from this study have identified that “confidentiality” found to be significantly related to the level of compliance towards anti-money laundering regime by professional accountants.

Keywords: Anti-Money Laundering Compliance, Know Your Customer; Professional Accountants, Confidentiality, Client Due Diligent

Introduction

Over the recent years, money laundering cases and their connected predicate offences had been in the media news spotlight every so often than ever. Most recent case was involving Former Prime Minister of Malaysia Dato’ Sri Najib Razak. Many institutions were being penalizes with huge fines for their direct or indirect involvement in the process of cleansing “ill-gotten gains” generated by criminals. The “indirect involvement” is mainly due to the failures of ensuring basic risk-based assessments, such as, customer due diligence and know your customers (KYC). Money laundering offences include virtually all profit-motivated crimes from drug and human trafficking, trade and insurance fraud, prostitution and various illegal

profit-motivated crimes derived from bank, securities, arms smuggling, gambling, extortion, and terrorism (Kim & Kwang, 2011).

Due to this latest trend, the Anti-Money Laundering Act (AMLA 2001) has been amended in 2004 and becoming Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act (AMLATFPUAA, 2001) The amendments have included, among others, bringing about the DNFBP (Designated Non-Financial Business or Profession) professionals as a reporting institution (AMLA 2001). A reporting institution had included basic compliance responsibilities, among others, to ensure a “know-you-client” assessment, conduct due diligence, to keep proper record and to report any form of suspicious transaction.

The introduction of Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act (AMLATFPUAA, 2001¹) does not only govern financial institutions, but also encompasses a wider range of industries and professions including casino operators, lawyers, notaries, legal professionals and accountants, real estate agents, and also precious metal and stone dealers. Financial institutions are positioned as important gatekeepers to this AMLA regime. Although there are several legislations formulated to curb money laundering offences, the crime continues to increase due to several factors. This includes ineffective implementation of the laws; lack of awareness and understanding of the legal requirements by professionals, the public at large and other stakeholders; low competency level in handling money laundering cases by law enforcement agencies; complexity of the offences itself; and participation of professionals in facilitating offenders to commit the crime.

Currently not many research paper were drawn on money laundering compliance, money laundering researchers in Malaysia have the tendency to focus on the conceptual issues (Shanmugam and Thanasegaran, 2008) and the legal development of the AML legislation (Lilley, 2003; Mohd, 2007; Thanasegaran and Shanmugam, 2007; Hamin, 2015). This study aims to identify whether confidentiality of client information was important determinant for the compliance of AMLA2001 among professional accountants. This paper will discuss on literature review in Chapter two, methodology in chapter three, analysis and discussion in chapter four and conclusion in chapter five.

Literature Review

From the legislative perspective, AMLA 2001 defines money laundering as an “ act that engages, directly or indirectly, in a transaction that involves proceeds of any unlawful activity, acquires, receives, possesses, disguises, transfers, converts, exchanges, carries, disposes, uses, removes from or brings into Malaysia proceeds of any unlawful activity; or conceals, disguises or impedes the establishment of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of any unlawful activity” (AMLA 2001, Part II, Section 4). According to Simser (2006), money laundering is a process to transform illegal greedy gains to be legal by hiding its illegal origin from activities like drug, human or weapon trafficking, smuggling of goods and others. This illegal gain should be transformed to avoid any suspicion. In addition, the Central Bank of Malaysia, being a “Competent Authority” in anti-money laundering responsibility, defines money laundering as “all activities and procedures to change the identity of illegally obtained money so that it appears to have originated from a legitimate source” (BNM, 2002, as cited in Hamin, 2014). The Financial Action Task Force (FATF) defines money laundering as “the conversion or transfer of property, knowing that such property is derived from a criminal offence, for the

¹ For this study, the Act will only be referred to as AMLA 2001

purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequence of such actions; the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from a criminal offence; and the acquisition, possession, or use of property, knowing at the time of receipt that such property was derived from a criminal offence or from an act of participation in such offence" (FATF 2001, page 10). Any crime that generates significant profit through extortion, drug trafficking, arms smuggling and some white-collar crime may create a "need" for money laundering activities so that the illegal money is transformed to legal money.

Within the Malaysian context, there is a shortage of literature on the compliance measures to deal with money laundering and terrorist financing. Money laundering researchers in Malaysia have the tendency to focus on the conceptual issues (Shanmugam and Thanasegaran, 2008) and the legal development of the AML legislation (Lilley, 2003; Mohd, 2007; Thanasegaran and Shanmugam, 2007; Hamin, 2015).

MIA By-Laws

Since the legislative amendments in 2004, the DNFBPs are also required to comply with the AMLA 2001. Professional accountants as part of DNFBPs are expected to identify and report any suspicious money laundering activities to the FIU. Even though, AMLA was initially gazette in 2001, the requirements enforced on DNFBPs only surfaced after the 2004 amendments. Automatically, accountants have become reporting institutions and are obliged to report any suspicious transactions that are identified while providing varied services to their clients. The suspicious transactions or such activities must be vulnerable and may lead to intricate money laundering offences. The accountants will be able to identify and report money laundering activities because there are accountable to respond on the companies' operations, produce reliable financial statements, and mitigate the risks faced by the companies by holding good internal control and risk management (Melnik, 2003). The compliance industry has capitalized on the emphasis of the prevention of money laundering and the threat image that was created by the authorities (Van Duynes, 2006) to take up an important role in the battle against money laundering (Verhage, 2009).

However, the professional accountants or lawyers might use the independence of the profession, lawyer or accountant-client privilege and the duty of confidentiality as the primary justifications, for them not to comply with the imposition of the statutory duty to report any suspicious transactions under the Act laws across the globe (Hamin et al., 2014). By referring to the law enforcement, AMLA 2001 would disregard any law or regulation by the other authorities. In other words, the essential duties of secrecy and confidentiality in the customer relationship are exempted when it comes to money laundering (Rahman & Wahab, 2022). Hence, all professional accountants need to comply with the AMLA 2001 simultaneously.

The requirement imposed on professional accountants provided that, they only need to report suspicious transactions pursuant to Section 14(b) Report by Reporting Institutions of the AMLA, together with Section 20 Secrecy Obligations Overridden of AMLA 2001, and Section 24 Protection of Persons Reporting of AMLA 2001. Section 20 AMLA 2001 overrides any other secrecy obligation imposed by any other laws, from the purpose of complying with the provision under Part IV reporting obligation of the AMLA2001. Effective 30th September 2005 a new requirement, had mandated professional accountants to identify and verify particulars of clients, maintain records for a minimum period of six years, and implement Part

IV Reporting Obligation of the AMLA 2001. Obligation imposed on professional accountant under FATF Recommendation would include know your customer (KYC), customer due diligence (CDD), reporting suspicious transactions, keeping records of their client and implementing compliance program within the business. In addition to that, in 2006, any cash transactions exceeding a threshold limit that is more than RM10 000 specified by BNM and pursuant to section 14(a) of the AMLA, need to be reported to FIED (AMLA, 2001).

Compliance towards AMLA 2001

APG Report 2015 and the Bank Negara Compliance Report 2011 state that the ethical privilege and their duties of confidentiality toward their clients partially contributed to Malaysian low level of compliance with their AML duties. The literature on the awareness of the profession toward the imposition of AML statutory obligation is somewhat scarce. In the context of accountant and auditors, Omar et al (2016) argue that auditors as one of the DNFBPs are not aware of their full obligations under the AML regime.

The same report also indicated that nearly 77 % of the management and the compliance officers were not aware of the STR submission procedures and the red flag criteria in monitoring suspicious transactions (Bank Negara Compliance Report, 2011). Omar, Mohd-Sanusi and Prabowo (2015) suggest that the lack of awareness campaign conducted by the Financial Investigation Unit (FIU) of the Central Bank, to educate the DNFBPs in Malaysia led to the lack of knowledge of the accounting profession in submitting the Suspicious Transaction Report (STR) to the FIU. The results of APG Report in 2015 indicates that the awareness of the reporting institutions are mixed, in which the financial institutions display a much more significant knowledge and understanding of the risks than other DNFBPs (APG Report, 2015).

Confidentiality of Client Information

All reporting institutions including DNFBP need to report any suspicious transaction according to Section 19 (4) Compliance programme of the AMLA 2001. However, this creates negative reactions among them. In order to report any suspicious transaction, the professional accountants should know enough about the client and the client's business to recognize whether a transaction, or series of transactions, is unusual. Rahman (2013) discusses the impact of reporting suspicious transactions regimes on Malaysian banks. He argues that although the failure to report suspicious transactions is an offence under the law, reporting suspicious transactions may breach the banks' duty of confidentiality to their customers. More importantly, it could also undermine their customers' trust. A similar scenario happens to the professional accountants in Malaysia because they also need to comply with the accountant ethical standard issued by the MIA By-Law. One of the components in the ethical standard is confidentiality. Confidentiality is defined as professional accountants should be refrained from disclosing confidential information outside of the firm or employ organisation's confidential information acquired as a result of professional or business relationship without proper or specified authority for their personal advantage or the advantage of the third parties. A study by Kamarudin & Hamin (2019) discloses that their duty of confidentiality toward their clients is the greater reason of not compliance of AMLA 2001. The findings also suggests that they believe that in the absence of any informed consent from their clients, any information that they received from their clients or third parties is confidential. Hence, the legal duty to report under the AML law seems unfavorable.

Despite the fact that professional secrecy has been overridden by Section 20 of the AMLA 2001, the majority of the respondents are unaware or are somewhat ignorant of this provision and its implication. As a result of their adherence to the legal professional privilege, they have never reported or are reluctant to report to the FIU at Bank Negara of any suspicious transactions involving their clients. Such reluctance to report results in the lack of filing the STR and reporting their clients to the competent authority (Kamarudin & Hamin, 2019). This situation harmed the economy condition of Malaysian since the money laundering activities was fail to be detected.

Research Methodology and Analysis

This study adopts a quantitative research method using a questionnaire as the main instrument to collect data from professional accountants, who are also members of the DNFBP group. The questionnaires were distributed through post and email, targeting members of MIA comprising of audit and tax partners, audit and tax managers, and audit and tax seniors with working experience of at least three years. Of the 275 questionnaires received, only 215 were usable (20% usable response rate) for the analyses. Sekaran (2003) recommend that respondents who answered at least 75% of the questionnaire are considered as a useful completed sample. The constructs were operationalised using the Likert scales which is a common approach used to measure a wide variety of latent constructs (Kent, 2001). In this study, a seven-point Likert scale ranging from strongly agree (7) to strongly disagree (1) was used to assess AML compliance (independent variables). As for the dependent variable referring confidentiality of client information, the scale ranged from strongly implemented (7) to strongly unimplemented (1) for the implementation of AML compliance as stipulated by AMLA 2001 and FATF recommendations were used. This study only used three requirements of AML 2001 compliance, which are CDD, KYC and RK.

This study used SPSS to analyse the data captured from the questionnaire. Some of the statistical procedures undertaken for the study included techniques used to test data normality, data reliability, mean scores, the correlation between variables and linear regression analysis.

Results and Discussion

Data Reliability

Cronbach's alpha is the most commonly used method to assess the reliability (Sekaran, 2003). It is also considered the first method to be used to assess the reliability of a measurement scale (Churchill, 1979; Nunnally, 1978). As different levels of acceptance rates were suggested in the literature, this study accepted 0.60 as the minimum level to indicate the internal consistency of the constructs.

Cronbach's value of 0.6 is the rule of thumb for describing internal consistency, whereby Cronbach's value of greater than 0.6 indicates excellent congruence and composite reliability (Zinbarg et al., 2006). Overall, this study recorded a Cronbach's value of 0.897 that describes the consistency of the data.

Normality Test and Multicollinearity

Of the 275 responses received, 60 had to be removed because they failed to complete at least 75% of the questionnaire. Finally, this study focused on only 215 respondents, all independent and dependent variables were within the range of skewness and kurtosis between 1.90 and -1.96 indicating normality with a significance level of 0.05. Meanwhile, there was no

indication of severe multi-collinearity in the relationship between the variables in the model. All of the variables yielded tolerance values of more than 0.10 and VIFs values of less than 10. Therefore, the results suggested that there was no collinearity in this model.

Correlation Analysis

The correlation relationship was investigated using the Pearson product-moment correlation coefficient. A moderate correlation coefficient was gauged between $r = 0.131$ and 0.537 with a significance level of $p < 0.01$. The results also indicated no evidence of multicollinearity as the correlation between the variable was estimated below 0.9. According to Hair et al. (2010), a high correlation is detected above 0.9.

Descriptive Analysis

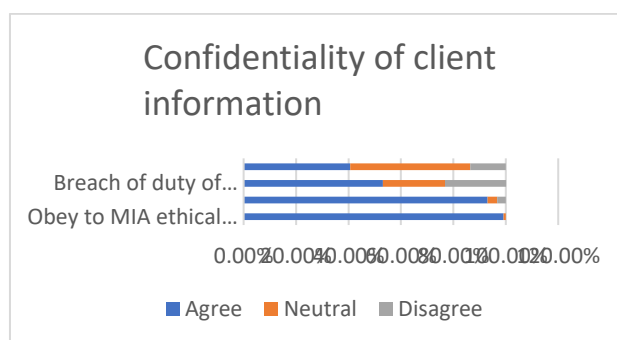


Figure 1.0 Confidentiality of client information

For the professional accountants, confidentiality is vital in carrying out their duties. Professional accountant needs to obey with MIA By-Law (on professional ethics, conduct and practice) and at the same time comply with AMLA 2001 and FATF standard. MIA By-Laws has dictate that professional accountant should comply with the principle of confidentiality, which requires an accountant to respect confidentiality of information acquired as a result of professional and business relationship. However, as reporting institution under AMLA 2001, the accountants are required to provide an information to the FIED for any suspicious transaction found on the clients. There are four (4) items relate to the confidentiality of client information which are (i) professional accountants should obey to accountant ethical standard issued by MIA By-Law; (ii) professional accountant owed duty of confidentiality to their clients under the accountant ethical standard; (iii) complying AMLA regime would make them breach the confidentially duty towards their clients and (iv) client would be aware of the conflict of interest when the accountant complies with the AMLA regime.

More than 95% of the respondents agreed that professional accountants should obey to accountant ethical standard issued by MIA By-Law and professional accountant owed duty of confidentiality to their clients under the accountant ethical standard. However, more than 20% of the respondents are neutral when asked whether client would be aware of the conflict of interest when the accountant complies with the AMLA regime. Confidentiality of client information becomes an important issue in anti-money laundering regime because professional accountant are having a good knowledge on the nature of business and client business activities in such that that it is possible for the professional accountant to detect any suspicious transactions and later reported to the regulators (FIED).

Multiple Regression Analysis

The results in Table 1 explain on regression analysis between compliance of AMLA 2001 and confidentiality of client information. Based on the model, it indicates a significant positive

relationship between the variables ($R^2 = .350$), $p = .000$). Standardised beta coefficient of .229 of money laundering compliance shows that determinant factors of the compliance make a strong and unique contribution in explaining money laundering compliance. It is hypothesized that there is a significant negative relationship between confidentiality of client information and the compliance with money laundering requirement. This study supports the hypotheses because the significant level is 0.000. It shows that there is a relationship between confidentiality of client information with compliance of money laundering requirement.

As professional accountants, there is no secrecy between them and client; they should know all information relating to their client business matters. Any suspicious transaction occurred by the client needs to be informed or reported to the FIED as soon as possible. The professional accountants cannot be charged for supplying the information to the regulators because the Act has provided the exception to the reporting institution. However, the failure to do as what has been required by the Act may give negative impact to the reporting institution in terms of penalty charges or even imprisonment.

Table 1

Regression analysis

Variable	Coefficients	T stat	P value
Independent variable			
Confidentiality	-.229	2.682	.000
R square	.350		
Adjusted r square	.301		

Conclusion

AMLA 2001 required that all reporting institutions including DNFBP needs to conduct CDD, KYC, report keeping and to report any suspicious transactions to Financial Intelligence Unit (FIED) of Bank Negara Malaysia. In order to report any suspicious transaction, the accountant should have enough knowledge about the client and the client's business in order to recognize any unusual or suspicious transactions. Therefore for the purpose of compliance, it is crucial for accountant to adopt CDD and KYC policy at hand.

Confidentiality of client information is becoming another variable for the determinant of AMLA 2001 compliance. This finding adds to the literature as another new determinant that is important under AMLA regime. Based on this study, professional accountants refrain themselves from making a report because of the confidentiality of client information. Hence, competent authority which is BNM needs to further educate all professional accountants to obey under AMLA 2001 rules and regulation and how important for the profession to make a report to FIED if their client were suspected of carrying out money laundering activities. Limitation of this study is mainly not concentrated on the whole group of DNFBP which this study only focused on professional accountants. In future, the author hopes to do a similar research which combines other potential variables.

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